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2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION  
5

6 SON HOANG NGUYEN,

7 Petitioner,

8 vs.

9 JOHN TILTON, Acting Director,

10 Respondent.  
11

Case No: C 08-03353 SBA

**ORDER TO SHOW CAUSE RE  
DISMISSAL**

12 On September 30, 2011, the Court denied Respondent's motion to dismiss, and  
13 granted Petitioner's request to stay the action so that he could exhaust his Brady claim in  
14 state court. Dkt. 31 at 5. The Order stated, inter alia, that: "Respondent's motion to  
15 dismiss the petition as a mixed petition is DENIED without prejudice to re-filing if Nguyen  
16 fails to pursue exhaustion of his Brady claim diligently in state court." Id. at 6.

17 The Court administratively closed the action during the pendency of the stay. Id. at  
18 6. In addition, the Court directed that: "[Petitioner] must file quarterly status reports  
19 describing the progress of his state court proceedings, commencing forty (45) days from the  
20 date of this Order and continuing every ninety (90) days thereafter until his state court  
21 proceedings are terminated. He must also attach to his status reports copies of the cover  
22 page of any document that he files with or receives from the California Supreme Court  
23 relating to the claims." Id. In violation of that Order, Petitioner has failed to file any status  
24 reports. The Court has reviewed the California Court's website, but has been unable to  
25 locate any information regarding whether Petitioner made any further efforts to exhaust his  
26 Brady claim.

27 District courts may dismiss an action based on the failure of a habeas petitioner to  
28 comply with a court order or for lack of prosecution. Fed. R. Civ. P. 41(b); Link v. Wabash

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1 R.R. Co., 370 U.S. 626, 629-30 (1962); Pagtalunan v. Galaza, 291 F.3d 639, 640 (9th Cir.  
2 2002) (affirming dismissal of habeas petition because of petitioner's disobedience with  
3 orders setting filing deadlines); see also Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir.1995)  
4 (affirming dismissal of prisoner's civil rights complaint for failure to file opposition to  
5 motion to dismiss as required by local rule). In determining whether to dismiss a claim for  
6 disobedience with a court order or the failure to prosecute pursuant to Rule 41(b), the court  
7 must weigh the following factors: (1) the public's interest in expeditious resolution of  
8 litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the  
9 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the  
10 availability of less drastic alternatives. Pagtalunan, 291 F.3d at 642; Ferdik v. Bonzelet,  
11 963 F.2d 1258, 1260-61 (9th Cir. 1992). Accordingly,

12 IT IS HEREBY ORDERED THAT, within fourteen (14) days of the date this order  
13 is filed, each party shall file a Certificate of Counsel to explain why the case should or  
14 should not be dismissed. The Certificate shall set forth the nature of the cause, its present  
15 status, the reason why a final determination of the action has not been sought or the action  
16 otherwise terminated, any basis for opposing dismissal and its expected course if not  
17 dismissed. FAILURE TO FULLY COMPLY WITH THIS ORDER WILL BE DEEMED  
18 SUFFICIENT GROUNDS TO DISMISS THE ACTION, WITHOUT FURTHER  
19 NOTICE.

20 IT IS SO ORDERED.

21 Dated: 5/3/17

  
SAUNDRA BROWN ARMSTRONG  
Senior United States District Judge